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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/809,009	03/16/2001	Jean-Marc Ascione	05725.0634-00	5103

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EXAMINER

ELHILO, EISA B

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 08/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/809,009

Applicant(s)

ASCIONE ET AL.

Examiner

Eisa B Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-65 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 15.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

1 This action is responsive to the remarks filed on May 28, 2003.

2 The rejection of claims 14 and 34 under 35 U.S.C. 112, 2nd paragraph, is withdrawn based on the applicant's remarks and supported documents that provided by the applicant.

3 The terminal disclaimer filed on 7/23/2003 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of the co-pending application No. 09/809,007, has been reviewed and is accepted. The terminal disclaimer has been recorded.

4 The rejection of claims 1-6 and 8-65 under 35 U.S.C. 103(a) as being unpatentable over de la Mettrie et al. (US 5,989,295) in view of (XP-000934522), is maintained for the reasons set forth in the office action in paper No. 13, dated on 2/14/2003.

5 The rejection of claim 7 under 35 U.S.C. 103(a) as being unpatentable over de la Mettrie et al. (US 5,989,295) in view of (XP-000934522) and further in view of de la Mettrie et al. (US 5,976,195) is maintained for the reasons set forth in the office action in paper No. 13, dated on 2/14/2003.

Response to Applicant's Arguments

6 Applicant's arguments filed 5/28/2003 have been fully considered but they are not persuasive.

With respect to the rejection based upon de la Mettrie (US' 295) in view of (XP'-522), Applicant argues that there is no suggestion or motivation to combine the teachings of the references.

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The Examiner respectfully disagrees with the above arguments because the primary reference of de la Mettrie (US' 295) teaches clearly a hair dyeing composition comprising at least one anionic polymer (see col. 1, lines 9-10), which implies that more than one anionic polymer may be presented in the composition. Further, De la Mettrie teaches that the presence of the polymers in the dyeing composition prevent the composition from running out of the hair and make the composition maintains its gelled nature and thus remains better localized at the point of application (see col. 1, lines 52-62) and (XP' 522) as a secondary reference teaches in another analogous art of cosmetic formulation anionic polymers used to provide viscosity enhancement and clarity (see p. 1552, 2nd paragraph), and, thus, it would have been obvious to one having ordinary skill in the art to be motivated to use the polymers that taught by (XP' 522) in the hair dyeing composition of De la Metirre (US' 295) for viscosity enhancement and clarity. Therefore, the prima facie case of obviousness has been established.

With respect to the rejection based upon de la Mettrie (US' 295) in view of (XP'-522) and de la Mettrie (US' 195).

Applicant argues that there is no suggestion or motivation to combine the teachings of the references.

The examiner respectfully, disagrees to the above arguments for the same reasons stated above.

The examiner advised the applicant to provide a data of showing to indicate that the claimed composition demonstrates unobvious and unexpected results over the composition of the closest prior art of record.

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7 **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

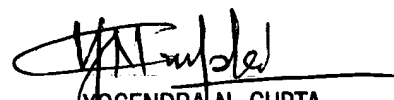
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (703) 305-0217. The examiner can normally be reached on M - F (7:30-5:00) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.


Elhilo
July 29, 2003


YOGENDRA N. GUPTA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700